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(ii) An individual who the employer has reported to the Federal Air Surgeon under § 120.111(d).

(4) The employer must not permit an employee who is required to hold an airman medical certificate under 14 CFR part 67 to perform a safety-sensitive duty to resume that duty until the employee has:

(i) Been issued an airman medical certificate from the Federal Air Surgeon after the date of the verified positive drug test result or refusal to test; and

(ii) Met the return to duty requirements in accordance with 49 CFR part 40.

(5) Reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(6) MROs, SAPs, and employers who send reports to the Federal Air Surgeon must keep a copy of each report for 5 years.

### § 120.115 Employee Assistance Program (EAP).

(a) The employer shall provide an EAP for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and training for supervisors making determinations for testing of employees based on reasonable cause.

(b) *EAP education program.* (1) Each EAP education program must include at least the following elements:

(i) Display and distribution of informational material;

(ii) Display and distribution of a community service hot-line telephone number for employee assistance; and

(iii) Display and distribution of the employer's policy regarding drug use in the workplace.

(2) The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug

test result, or refusing to submit to a drug test required under the rule.

(c) *EAP training program.* (1) Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements:

(i) The effects and consequences of drug use on individual health, safety, and work environment;

(ii) The manifestations and behavioral cues that may indicate drug use and abuse; and

(2) The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified in § 120.115 (c).

(3) The employer shall ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training.

(4) The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years.

(5) Documentation of all training given to employees and supervisory personnel must be included in the training program.

(6) The employer shall identify the employee and supervisor EAP training in the employer's drug testing program.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009, as amended by Amdt. 120-1, 78 FR 42003, July 15, 2013]

### § 120.117 Implementing a drug testing program.

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Anti-drug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization, or Drug and Alcohol Testing Program Registration from the FAA:

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If you are . . .	You must . . .
(1) A part 119 certificate holder with authority to operate under parts 121 or 135.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
(2) An operator as defined in § 91.147 of this chapter.	Obtain a Letter of Authorization by contacting the Flight Standards District Office nearest to your principal place of business.
(3) A part 119 certificate holder with authority to operate under parts 121 or 135 and an operator as defined in § 91.147 of this chapter.	Complete the requirements in paragraphs 1 and 2 of this chart and advise the Flight Standards District Office and the Drug Abatement Division that the § 91.147 operation will be included under the part 119 testing program. Contact the Drug Abatement Division at FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.
(4) An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.
(5) A part 145 certificate holder who has your own drug testing program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, if you opt to conduct your own drug testing program.
(6) A contractor who has your own drug testing program.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, if you opt to conduct your own drug testing program.

(b) Use the following chart for implementing a drug testing program if you are applying for a part 119 certificate with authority to operate under parts 121 or 135 of this chapter, if you intend to begin operations as defined in § 91.147 of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization, or Drug and Alcohol Testing Program Registration from the FAA. Your employees who perform safety-sensitive functions must be tested in accordance with this subpart. The chart follows:

If you . . .	You must . . .
(1) Apply for a part 119 certificate with authority to operate under parts 121 or 135.	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification,  (ii) Implement an FAA drug testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.
(2) Intend to begin operations as defined in § 91.147 of this chapter.	(i) Have a Letter of Authorization,  (ii) Implement an FAA drug testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.
(3) Apply for a part 119 certificate with authority to operate under parts 121 or 135 and intend to begin operations as defined in § 91.147 of this chapter.	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification and a Letter of Authorization,  (ii) Implement your combined FAA drug testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.
(4) Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military).	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, prior to starting operations,  (ii) Implement an FAA drug testing program no later than the date you start operations, and (iii) Meet the requirements of this subpart.

(c) If you are an individual or company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operation as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military, use the following chart to determine what you must do if you opt to have your own drug testing program.

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If you . . .	And you opt to conduct your own drug program, you must . . .
(1) Are a part 145 certificate holder.	<p>(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591,</p> <p>(ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, or operator as defined in §91.147 of this chapter, and</p> <p>(iii) Meet the requirements of this subpart as if you were an employer.</p>
(2) Are a contractor	<p>(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591,</p> <p>(ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, or operator as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military, and</p> <p>(iii) Meet the requirements of this subpart as if you were an employer.</p>

(d) *Obtaining an Antidrug and Alcohol Misuse Prevention Program Operations Specification.* (1) To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector. Provide him/her with the following information:

- (i) Company name.
- (ii) Certificate number.
- (iii) Telephone number.
- (iv) Address where your drug and alcohol testing program records are kept.
- (v) Whether you have 50 or more safety-sensitive employees, or 49 or fewer safety-sensitive employees. (Part 119 certificate holders with authority to operate only under part 121 of this chapter are not required to provide this information.)

(2) You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification issued by your FAA Principal Operations Inspector or Principal Maintenance Inspector that you will comply with this part and 49 CFR part 40.

(3) You are required to obtain only one Antidrug and Alcohol Misuse Pre-

vention Program Operations Specification to satisfy this requirement under this part.

(4) You must update the Antidrug and Alcohol Misuse Prevention Program Operations Specification when any changes to the information contained in the Operation Specification occur.

(e) *Register your Drug and Alcohol Testing Program by obtaining a Letter of Authorization from the FAA in accordance with §91.147.* (1) A drug and alcohol testing program is considered registered when the following information is submitted to the Flight Standards District Office nearest your principal place of business:

- (i) Company name.
- (ii) Telephone number.
- (iii) Address where your drug and alcohol testing program records are kept.
- (iv) Type of safety-sensitive functions you or your employees perform (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that your company will comply with this part and 49 CFR part 40.

(2) This Letter of Authorization will satisfy the requirements for both your drug testing program under this subpart and your alcohol testing program under subpart F of this part.

(3) Update the Letter of Authorization information as changes occur. Send the updates to the Flight Standards District Office nearest your principal place of business.

(4) If you are a part 119 certificate holder with authority to operate under parts 121 or 135 and intend to begin operations as defined in §91.147 of this chapter, you must also advise the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.

(f) *Obtaining a Drug and Alcohol Testing Program Registration from the FAA.* (1) Except as provided in paragraphs (d) and (e) of this section, to obtain a Drug

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and Alcohol Testing Program Registration from the FAA, you must submit the following information to the Office of Aerospace Medicine, Drug Abatement Division:

- (i) Company name.
- (ii) Telephone number.
- (iii) Address where your drug and alcohol testing program records are kept.
- (iv) Type of safety-sensitive functions you or your employees perform (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).
- (v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.
- (vi) A signed statement indicating that: your company will comply with this part and 49 CFR part 40; and you intend to provide safety-sensitive functions by contract (including subcontract at any tier) to a part 119 certificate holder with authority to operate under part 121 or part 135 of this chapter, an operator as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

(2) Send this information to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.

(3) This Drug and Alcohol Testing Program Registration will satisfy the registration requirements for both your drug testing program under this subpart and your alcohol testing program under subpart F of this part.

(4) Update the registration information as changes occur. Send the updates to the address specified in paragraph (f)(2) of this section.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3154, Jan. 20, 2010, as amended by Amdt. 120-1, 78 FR 42003, July 15, 2013]

### § 120.119 Annual reports.

(a) Annual reports of testing results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (Janu-

ary 1 through December 31) in accordance with the following provisions:

(1) Each part 121 certificate holder shall submit an annual report each year.

(2) Each entity conducting a drug testing program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(3) The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

(b) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by DOT. The Administrator may designate means (*e.g.*, electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/drug\\_alcohol](http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol).

(c) A service agent may prepare the MIS report on behalf of an employer. However, a company official (*e.g.*, Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3154, Jan. 20, 2010]

### § 120.121 Preemption.

(a) The issuance of 14 CFR parts 65, 91, 121, and 135 by the FAA preempts any State or local law, rule, regulation, order, or standard covering the subject matter of 14 CFR parts 65, 91, 121, and 135, including but not limited to, drug testing of aviation personnel performing safety-sensitive functions.